NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

KAMAL AGNI, Petitioner, v. ERIC H. HOLDER Jr., Attorney General, Respondent.	No. 07-73387 Agency No. A046-140-297 MEMORANDUM[*]

On Petition for Review of an Order of the
Board of Immigration Appeals

Argued and Submitted October 16, 2009
Seattle, Washington

Before: RAWLINSON and CALLAHAN, Circuit Judges, and BURNS,[**] District Judge.

Kamal Agni, a native and citizen of Morocco, petitions for review of the Board of Immigration Appeals' ("BIA") determination that he is removable

[*] This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

[**] The Honorable Larry A. Burns, U.S. District Judge for the Southern District of California, sitting by designation.

pursuant to 8 U.S.C. § 1227(a)(2)(E)(i) and (E)(ii). We have jurisdiction pursuant to 8 U.S.C. § 1252, and we deny the petition.[1]

Agni's conviction under section 9A.36.041 of the Revised Code of Washington for fourth degree domestic violence assault does not make him removable under § 1227(a)(2)(E)(i) because the record of conviction does not establish that Agni admitted to using the requisite amount of force to satisfy the federal definition of "a crime of violence." *See Fernandez-Ruiz v. Gonzales*, 466 F.3d 1121, 1124-25 (9th Cir. 2006) (en banc) (explaining that under § 1227(a)(2)(E)(i), the conviction must be a federal "crime of violence" that is committed against a person in a domestic relationship with the defendant); *Suazo-Perez v. Mukasey*, 512 F.3d 1222, 1226-27 (9th Cir. 2008) (holding that section 9A.36.041 is not categorically a "crime of violence," and that the modified categorical approach requires the record to show that the defendant admitted to facts satisfying the federal definition).

However, Agni is removable under § 1227(a)(2)(E)(ii). Under the modified categorical approach, the record of conviction shows that Agni was enjoined under a "protection order . . . issued for the purpose of preventing violent or threatening

[1] The parties are familiar with the facts of this case, so we repeat them here only as necessary.

acts of domestic violence." 8 U.S.C. § 1227(a)(2)(E)(ii). In his guilty plea, Agni admitted that the order was issued to protect his domestic partner. Furthermore, facts set forth in the Certification for the Determination of Probable Cause – a document that was expressly incorporated into the plea agreement with Agni's consent – establish that the order was issued as a result of Agni's domestic violence assault conviction and that it required him to maintain a distance of 500 feet from his domestic partner. *See Suazo-Perez*, 512 F.3d at 1226-27 (noting that a petitioner's decision to incorporate documents into his guilty plea made them "an explicit statement 'in which the factual basis for the plea was confirmed by the defendant'") (quoting *Parrilla v. Gonzales*, 414 F.3d 1038, 1044 (9th Cir. 2005)). Thus, we conclude that the no-contact order was "issued for the purpose of preventing violent or threatening acts of domestic violence." 8 U.S.C. § 1227(a)(2)(E)(ii).

We also conclude that the record of conviction shows that Agni violated the portion of the order involving "'protection against credible threats of violence, repeated harassment, or bodily injury.'" *Alanis-Alvarado v. Holder*, 558 F.3d 833, 839 (9th Cir. 2009) (quoting 8 U.S.C. § 1227(a)(2)(E)(ii)). The Certification for the Determination of Probable Cause demonstrates that Agni violated the portion of the order requiring him to maintain a distance of 500 feet from his partner,

which though not necessarily violent in and of itself, nonetheless "involves protection against" violence, threats or harassment. *Id*. at 839-40 (explaining that an injunction against, for example, making a telephone call to the protected person "involves" protection against harassment, threats or violence within the meaning of § 1227(a)(2)(E)(ii)); *see also Szalai v. Holder*, 572 F.3d 975, 982 (9th Cir. 2009) (concluding that the petitioner's violation of a "restraining order's 100 yard stay away provision" involved protection against threats of violence, harassment, or bodily injury).

PETITION DENIED.